IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.886 OF 2004
IN
NOTICE OF MOTION NO.4179 OF 2002
IN
B.C.C.C. SUIT NO.6007 OF 2002

Sarvajanik Navratra Nstav Mandal & ors.).. Appellants

vs.

Municipal Corporation of Greater)
Bombay and others).. Respondents

Mr.G.S.Godbole i/b.Harakhchand & Co. for the Appellants.

Mr.J.Xavier for Respondent No.1.

Mr.Harindar Toor i/b.Crawford Bailey & Co. for Respondent No.2.

Mr.Kirtikumar Jadhav with Ms.Vaishali Shetye for Respondent i/b.M/s.Joy Legal Consultants for Respondent No.3.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 20TH DECEMBER 2004

P.C.:

. The entire dispute in this Appeal From Order has arisen because the Appellants who are the members of a Committee of the residents are of the view that the BEST sub-station has been installed in a place other than that which was approved in the plan annexed to the agreement between them and the builder. The sub-station has been shifted and is to be installed near the Club house. The Appellants fear that the installation of BEST sub-station in this place could result in a hazardous situation since children who play in the

precincts would be affected if there is any untoward incident. Therefore, the Appellants contend that instead of being faced with an accident, they have requested the builder to shift the sub-station to another site where the proposed building is to be erected. The builder has no objection and, therefore, the Suit itself could be disposed of by entering into consent terms.

2. However, Mr.Toor appearing for Respondent No.2, has vehemently opposed the submission made by Mr.Godbole for the Appellants. He submits that the BEST sub-station has not been operational for a long period of time and as a result there is excess load over other sub-stations which is hazardous. He submits that shifting of the sub-station to another site may not be feasible as the BEST has not approved of that site. According to him, the new site where the sub-station has been erected had been sanctioned by the Corporation in 2002. The BEST has not yet installed the transformer in the existing sub-station.

3. Since the entire dispute will be put to an end, I am of the view that the builder should be permitted to apply to the authorities including the BEST and the Corporation to shift the sub-station to a different site as proposed by the builder in their affidavit filed today by one Junaid A. Merchant, Director of Respondent No.3. The Appellants have no objection to the

sub-station being shifted to this site.

4. The builder will submit his plans for installation of a sub-station in the site proposed in the plan annexed to the affidavit of Junaid A. Merchant filed today in Court, within one week from today. The necessary permissions will be sought from all the concerned authorities including the Corporation and the BEST. The authorities will consider the plans and the application submitted within a period of two weeks thereafter and communicate their decision to the builder. In the event the authorities permit the shifting of the sub-station, it shall be erected within eight weeks thereafter by the builder.

5. If the permission is refused, the transformer may be installed immediately on the existing site of the sub-station. In the event the BEST installs the transformer, no equities will be claimed in that respect.

6. Appeal From Order disposed of accordingly.

7. In view of the Appeal From Order being disposed of, nothing survives in Civil Application No.1347 of 2002 and the same is disposed of accordingly.